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OCT 2 1961

FOREIGN SERVICE DESPATCH

FROM : Amembassy TOKYO

284
NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

September 25, 1961
DATE

REF : Tokyo's D-185 of August 28, 1961

FBO-1 U/PR-1 SCA-3 SCS-2 Ew

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				OTHER	AGR	COM	FRB	INT	LAB	TAR	TR	XMB					
	REC'D 9-29				AIR	ARMY	CIA	NAVY	OSD	OCB	USIA						

SUBJECT: Consular Convention with Japan

Desp to Tokyo W-170 10-24

A draft Memorandum of Conversation covering the sixth in the current series of meetings with the Ministry of Foreign Affairs to negotiate a consular convention between the United States and Japan is enclosed. This meeting, held on September 14, 1961, was called by the Japanese side for the purpose of completing the presentation of its views concerning the annotated long form convention text proposed by the United States and presented to the Foreign Ministry earlier this year.

The Department will note that the attached record of discussions at the sixth negotiating meeting specifically supplements only those portions of previous discussions (reported by the Embassy's D-185) that relate to Articles 13 (2) (a), 13 [(3)] [(4)] (d), 16 (1), and 17 (1) (e) of the proposed convention.

The Japanese side has reiterated its interest in receiving an early United States response to the pending Japanese counterproposals in orde that further negotiation of the consular convention may proceed in the near future.

For the Ambassador:

LEGAL ADVISER
Embassy Tokyo
OCT 2 1961
DEPARTMENT OF STATE

Ralph J. Blake
Counselor for Consular Affairs

Enclosure:
Draft Memorandum of Conversation

RJBlake:af
REPORTER

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Formal Resumption of US-Japan Consular Convention Negotiations
6th Meeting, September 14, 1961, Foreign Ministry, 3:00 p.m.

Japanese Delegation:

Mr. Motoo Ogiso, Chief, Legal Section, Treaties Bureau
Mr. Mitsuro Donowaki, Secretary, Legal Section, Treaties Bureau
Mr. Gohachiro Shono, Secretary, Legal Section, Treaties Bureau
Mr. Kumao Kaneko, Secretary, Legal Section, Treaties Bureau
Mr. Takeo Iguchi, Secretary, Treaties Section, Treaties Bureau
Mr. Keijiro Matsumura, Secretary, North American Section, American Affairs Bureau
Miss Hisami Mano, Secretary, North American Section, American Affairs Bureau
Mr. Toshitake Katayama, Secretary, Protocol Section

American Delegation:

Mr. Ralph J. Blake, Counselor of Embassy
Mr. Harrison M. Holland, Second Secretary of Embassy

Proceedings

Japan: We indicated previously that we might present a new proposal with respect to Article 12. We have now decided that no new proposal will be submitted.

With respect to the diesel oil delivery tax referred to in Article 13 /(3)/ /(4)/ (d), we wish to make a few comments. By virtue of Article 12, exemptions from the payment of this tax would be allowed when the purchase is made by the sending state from a wholesaler or importer. However, for technical reasons it would be difficult to accord this exemption if purchase were made from a retailer. /Article 12 has reference to financial privileges and immunities accorded the sending state with respect to its consular establishments whereas Article 13 has reference to such privileges and immunities accorded consular officers and employees./ On the other hand, as Article 13 /(3)/ /(4)/ (d) refers to the right of the receiving state to impose the diesel oil delivery tax on consular officers and employees, they would not be accorded exemption from this tax, if purchase were made for personal use.

US: If a purchase agreement were made with, for example, an American oil company in Japan such as Caltex or Stanvac to supply fuel oil to the Embassy, its constituent consular posts and American staff members, would the Embassy be exempt from paying the diesel oil delivery tax?

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Japan: Yes, for use in U. S. Government owned or leased office and residence quarters. Consular offices could also make their own purchase arrangements with a wholesaler or importer if they so desired.

We would now like to discuss Article 13 (2) (a) with specific reference to previous discussions covering consular license plates. Having considered your observation that consular license plates may not be available in all States in the United States, we would like to reword the proposed Agreed Official Minute with respect to Article 13 (2) (a) to read as follows: "It is understood that the exemption of taxes and similar charges with respect to vehicles in Article 13 (2) (a) shall be granted in Japan only to those vehicles which are entitled to receive, or have received, consular number plates."

US: The purpose of this Agreed Official Minute is to limit consular officers and employees assigned to Japan to the free importation of one car only, is it not?

Japan: That is correct.

US: As your Agreed Official Minute now reads there is no recognition of the principle of reciprocity. For example, if the State of California or Washington State allowed the registration of two or three or even four automobiles belonging to a Japanese consular officer, you could claim the right of free importation and registration of more than one vehicle under the present wording of the proposed Agreed Official Minute. Thus there is not true reciprocity. As the principle of reciprocity is a corner stone of this Consular Convention, we would propose that the following wording be added to your suggested Agreed Official Minute: After the phrase "in Japan" add the words "on a reciprocal basis." This would assure the integrity of the principle of reciprocity.

Japan: Because of the present policy of the Japanese Government to allow the free importation and registration of only one automobile for each consular officer and employee, Japan is unable to accord reciprocity on this matter.

US: If you are unable to accord reciprocity for the free importation of more than one car, then reciprocity requires that you be bound by the same restrictions in the United States. We would like to make one further point. While you are understandably concerned about the application of different laws and regulations in different states, you should be aware that if this Consular Convention becomes a formal treaty between our two countries, it would take precedence over various state laws and regulations.

/At this point the Japanese side entered into consultation for the purpose of rewording the proposed Agreed Official Minute./

Japan: After consulting amongst ourselves we wish to suggest the following wording for an Agreed Official Minute to Article 13 (2) (a): "It is understood that the number of vehicles entitled to the exemption referred to in Article 13 (2) (a) with respect to each officer or employee shall be fixed on a reciprocal basis. In Japan such exemption shall be granted to those vehicles which are to receive consular number plates."

US: This would seem to cover the point we had in mind.

Japan: We would now like to consider Article 16 (1) which was discussed at earlier sessions. Our original position was that this Article should not be interpreted to give consular officers more privileges than attorneys. It was also believed that a time limit should be placed on the visit of a consular officer to a detained national of his country. After consultation with officials of the Ministry of Justice, we have decided to accept Article 16 (1) as it now stands with the understanding, however, that the phrase "converse privately" means that a prison guard may remain in the room where a consul is interviewing a detained national so long as he is out of earshot of the conversation that is conducted. If this is agreeable, we will leave the wording of Article 16 (1) as it is.

US: Yes, this appears to be agreeable.

Japan: With respect to Article 17 (1) (e), in previous meetings we discussed the meaning of the term "material evidence". After consultation among ourselves we would like to propose the following Agreed Official Minute with respect to Article 17 (1) (e):

"It is understood that the evidence to be taken by consuls shall include testimony given by expert witnesses, but shall not include any real evidence.

"It is also understood that the courts of the sending state referred to in Article 17 (1) (e) include:

(a) With respect to Japan, judges who act in accordance with Articles 179 and 226 of the Japanese Code of Criminal Procedure and

(b) with respect to the United States, United States commissioners."

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Quoted herewith are definitions of "real evidence" and "United States Commissioner" furnished by the Japanese side at the 6th meeting.

"REAL EVIDENCE. Evidence furnished by things themselves, on view or inspection, as distinguished from a description of them by the mouth of a witness; e.g., the physical appearance of a person when exhibited to the jury, marks, scars, wounds, finger-prints, etc., also the weapons or implements used in the commission of a crime, and other inanimate objects, and evidence of the physical appearance of a place (the scene of an accident or of the commission of a crime or of property to be taken under condemnation proceedings) as obtained by a jury when they are taken to view it. See Chamb. Best, Ev. 16; Riggie v. Grand Trunk Ry. Co., 93 Vt. 282, 107 A. 126, 127. (Black's Law Dictionary, 4th Edition.)"

"United States Commissioner (kō-mish'ǫnér). An officer of the United States circuit (now district) court appointed and removable by that court. He is not a judge of a court of the United States within the meaning of the Constitution and a preliminary hearing before him is not a proceeding in the court which appointed him, or of any court of the United States. See Todd v. United States, 158 U. S. 278, 282, 39L. ed. (U. S.) 982, 983, 15 Sup. Ct. Rep. 889. (Law Dictionary with Pronunciations, J. A. Ballentine, 2nd Edition.)"

With respect to the first part of this Agreed Official Minute, the intention of using the term "real evidence" is to exclude physical objects. With respect to the latter part of our Agreed Official Minute which mentions "the court of the sending state" as including judges referred to in Articles 179 and 226 of the Japanese Code of Criminal Procedure and United States Commissioners, this Agreed Official Minute merely confirms the understanding already reached at the 5th meeting.

US: We do not conceive of any objection to this proposed Agreed Official Minute.

HMHolland:af

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